

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)

Provision of Directory Listing Information)

Under the Communications Act of 1934,)

As Amended)
_____)

CC Docket No. 99-273

RECEIVED

OCT 28 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF EXCELL AGENT SERVICES, L.L.C.

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October 28, 1999

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Excell Agent Services, L.L.C. (“Excell Agent Services” or “Excell”), by its attorneys, hereby files its reply comments in response to the Notice of Proposed Rulemaking issued in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

As the comments submitted by directory assistance providers and others in this proceeding demonstrate, the FCC must promote competition in the provision of directory assistance (“DA”), both to enhance consumer choice and facilitate competition in telephony. To

¹ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information Under the Communications Act of 1934, As Amended, Third Report and Order; Second Order on Reconsideration of the Second Report and Order; Notice of Proposed Rulemaking, 16 CR 3019 (rel. Sept. 9, 1999) (“Order and Notice”).

ensure the development of robust competition in the provision of DA service, all DA providers must have access to DA data on the same basis as local exchange carriers (“LECs”). Thus, even DA providers that are not traditional carriers should have the ability to access DA data from LECs at cost-based rates. To achieve this result, the FCC must reject the tentative conclusion contained in the Notice and Order that “a directory assistance provider that provides neither telephone exchange service nor telephone toll service does not fall within the class of entities that are entitled to the benefits of [Section 251(b)(3)].”² This tentative conclusion, if adopted, is contrary to the procompetitive goal of the Telecommunications Act of 1996:

AN ACT To promote competition and reduce regulation in order to secure lower prices and higher quality service for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.³

At a very minimum, the FCC should instead conclude that an agent of any competing provider of telephone exchange service or telephone toll service is entitled to nondiscriminatory access to DA at rates based on cost. Similarly, the FCC should expressly confirm that a DA provider that provides call completion services is a competing provider of telephone exchange service and telephone toll service, and thus falls squarely within the scope of Section 251(b)(3).

In submitting these reply comments to urge the FCC to encourage competition in the provision of DA, Excell wishes to stress the following points:

(1) The FCC should determine that DA providers that provide wholesale DA to competing providers of telephone exchange service and telephone toll service are agents of those providers entitled to the same rights as their principals under Section 251(b)(3). In reaching this

² Order and Notice, para. 184.

³ Telecommunications Act of 1996, P.L. No. 104-104, 110 Stat 56, 56 (1996).

conclusion, the FCC should reject the comments in this proceeding which suggest that a carrier can use an agent to provide its DA services but must seek access to DA data on its own and then transfer the data to its agent DA provider. This suggestion is unworkable and is, in some instances, contrary to state regulations and applicable tariff terms and conditions.

(2) The FCC should determine that LECs are prohibited from placing restrictions on the use of data by DA providers or their agents. There is no basis for a LEC to place restrictions on the use of DA data when an agent procures such data but not when a carrier obtains access to the data without the assistance of an agent. Any such restrictions on use would discriminate against those competing carriers that find it more economical and efficient to use a third party to provide DA services on behalf of that carrier.

(3) The FCC should determine that DA providers that perform call completion are providers of telephone exchange service or telephone toll service. In this age of emerging and converging technologies, there is no reason that call completion service does not at least meet the definition of a "telephone exchange service."

(4) The FCC should determine that charging unreasonable, so-called market-based rates for access to DA data to agents of carriers while charging lower, cost-based rates for the same data to the carriers that seek access without the assistance of an agent, is a discriminatory practice in violation of Sections 251(b)(3), 201(b) and 202(a) of the Communications Act. The FCC should conclude that if the LECs provide cost-based rates to some carriers, they must provide those rates to all carriers, regardless of whether the carriers provide DA to themselves or hire agents to handle their DA.

(5) Finally, the FCC should determine that a LEC is required to provide access to all of its in-region local and nonlocal DA data, including the DA data of customers that are served by other carriers in that region, due to its dominant position in the local market.

In making these decisions, the FCC would be a proponent of competition in the DA services market and would provide competitive carriers with a real choice in who to turn to for their directory assistance services, allowing, in turn, consumers to enjoy the benefits of open and fair competition.

II. AGENTS OF COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE AND TELEPHONE TOLL SERVICE MUST BE ALLOWED DIRECT ACCESS TO DIRECTORY ASSISTANCE DATA AND MUST NOT BE FORCED TO GAIN ACCESS THROUGH A COMPETING PROVIDER INTERMEDIARY

Excell agrees with the comments of some of the regional Bell Operating Companies (“RBOCs”) and all of the independent DA providers that support the concept that a DA provider acting as an agent for any LEC or telephone toll service (“IXC”) provider can access the DA data of the LECs pursuant to Section 251(b)(3) of the Communications Act of 1934, as amended (the “Act”). However, the RBOCs that concede to this concept also attempt to persuade the FCC that an agent DA provider is not authorized to use the information obtained pursuant to the agency relationship for any purpose other than for the provision of DA to its carrier customer.⁴ Excell does not agree that such restrictions should be placed on an agent’s use of DA data. Furthermore, several other RBOCs would only have the FCC permit the DA agency relationship if the carrier-principal obtains access to directory assistance data itself and then turns it over to its agent to provide the DA service.⁵ Excell submits that this is just a roundabout way to deny agents access to DA data under Section 251(b)(3) and to insulate the RBOCs from meaningful DA competition.

A. An Agent is Not an Agent if the Principal Has to Perform the Task of Securing Directory Assistance Data for Itself.

Given the fundamental agreement by commenters in this proceeding that an agent is an

⁴ See Cincinnati Bell Comments at 11; Bell Atlantic Comments at 5; US WEST Comments at 5.

⁵ See Cincinnati Bell Comments at 11; see also MCI/Worldcom Comments at 4-5.

entity appointed by a principal to act on behalf of the principal (subject to the principal's control), it seems nonsensical that certain RBOCs would request the FCC to require carrier principals to obtain DA information and then transfer it to their agents in order to comply with Section 251(b)(3). This would defeat the purpose of a carrier principal employing an agent to access DA data to provide DA service to its customers. Time Warner submitted comments in this proceeding which confirm that competitive providers rely on wholesale DA providers in order to provide DA services to their end user customers.⁶ Time Warner states that it "lacks the volume of traffic to self-provision DA service efficiently."⁷ To require competitive LECs and other competitive carriers to gain access to the DA data of the RBOCs and other LECs directly and then transfer it to their agents would effectively force these companies to change their business plans and operate in a manner which they have already determined is unduly labor and cost intensive, ineffective and inefficient.

B. The Suggestion that Competing Telecommunications Providers Should Gain Access to Directory Assistance Data and Then Provide this Data to Its Agent Directory Assistance Providers is Prohibited by Some Jurisdictions and Would Be Unworkable.

Aside from creating undue administrative burdens on competitive providers by forcing them to access the DA information directly and then transfer it to their agents, there are instances where such activities appear to be prohibited. The Texas Public Utility Commission, for instance, has held that "[a] telecommunications provider purchasing DA listings for end-use

⁶ See generally Time Warner Telecom Comments.

⁷ Id. at 1-3.

customers in Texas . . . may not resell or transfer those listings to any other entity."⁸ It also appears disingenuous for an RBOC to suggest that a carrier could purchase DA data and then transfer it to its agent DA provider when it is likely that most RBOC tariffs include terms that restrict carriers from transferring DA listings to other entities.⁹

III. THE FCC LACKS THE AUTHORITY TO RESTRICT A DIRECTORY ASSISTANCE PROVIDER'S USE OF DIRECTORY ASSISTANCE DATA

A. The FCC Has No Authority to Restrict the Use of Directory Assistance Data Once Obtained By Either A Competing Telecommunications Carrier Or An Independent Directory Assistance Provider.

Several participants in this proceeding have urged the FCC to restrict the use of DA data by DA providers once they gain access to DA via their agent status or by virtue of their ability to perform call completion (call completion is discussed *infra*). The FCC is authorized by the Act, specifically by Section 217,¹⁰ to conclude that DA providers are eligible to gain access to DA data as agents of competing carriers of telephone exchange service and telephone toll service. An agent of a competing carrier, once it steps into the "shoes" of that competing carrier, is entitled to be treated just like the competing carrier would be treated if it had obtained access to DA data without the help of an agent DA provider. However, the RBOCs and MCI/Worldcom incorrectly assert that the FCC possesses the authority to place limits on the use of the DA data

⁸ Application of Southwestern Bell Telephone Company to Introduce a New Optional Service, Nationwide Listing Service, Pursuant to Subst. R. § 23.25, Order, Public Utility Commission of Texas, PUC Docket No. 19461, para. 34A (signed Apr. 8, 1999).

⁹ See e.g. Southwestern Bell Telephone Company, Directory Assistance Listing Service Tariff, Use of Directory Assistance Listing Information, § 1.5(B) (approved July 20, 1999).

¹⁰ Section 217 of the Communications Act provides that the act of a carrier's agent is the act of both the agent and the carrier. 47 U.S.C. § 217.

because the competing carriers procure the information through an agent versus procuring it without the help of an agent.

In essence, the RBOCs are asking the FCC to discriminate against competing carriers that find it more efficient and economical to use agents for the provision of DA. This is exactly what Section 251(b)(3) attempts to prevent by mandating “nondiscriminatory access” to directory assistance and directory listing information. The FCC does not have the discretion to allow restrictions on the use of DA data that the LECs do not place on themselves. If a LEC is going to use its listings to provide nationwide DA service or another type of non-traditional DA service, it should not be able to prohibit other carriers and DA providers that access the listings from engaging in the same or similar activities. Furthermore, any regulations that would restrict the use of DA data when procured by an agent would discourage competition in the DA industry, which would conflict with the FCC’s tentative conclusion in the Order and Notice that it “should encourage such competition in the provision of directory assistance whether or not the particular directory assistance provider also provides telephone exchange service or telephone toll service.”¹¹

- B. An Agent's Provision of Directory Assistance to Its Principal's Customers is a Service Secured Through a Private Contract With Which the FCC Should Not Interfere.

US WEST states in its comments that it recognizes that independent DA providers can purchase directory listings as agents under Section 251(b)(3) but that it restricts the “use of the information to the specific purposes of Directory Assistance and operator services and to a use

¹¹ Order and Notice, para. 183.

associated with the specific carrier-principal on whose behalf the purchase is being made.”¹²

Excell submits that LECs should not be permitted to place restrictions on the use of DA information just because the information was secured by the competing provider’s agent and not the competing provider itself. A DA provider that seeks access to DA data as an agent is invested with the same authority to access and use the DA information as the competing provider of telephone exchange service or telephone toll service. Carrier principals have a statutory right to unrestricted access to DA information pursuant to Section 251(b)(3). If these carrier principals choose to use an agent to gain access to DA information in order to provide DA service to the carriers’ customers, any restrictions on the agent DA provider’s use of the DA data information should be decided by negotiations between the carrier principal and the DA provider agent, not by the LEC that is required to provide the original access to the data.

A principal should be permitted to legitimately use an agent to fulfill its need to provide directory assistance to its customers without the concern and extra burdens of restrictions placed on the use of that information. If the principal hires an agent to gain access to DA data pursuant to contract, then the entity selected by the principal is an independent contractor and an agent. The Restatement of the Law on Agency states that an agent and an independent contractor is “[o]ne who contracts to act on behalf of another and subject to the other’s control except with respect to his physical conduct.”¹³ The relationship between a competing provider and the agent/independent contractor is governed by a private contract between those parties, and the

¹² US WEST Comments at 5.

¹³ Restatement (Second) on Agency, § 14N (1958).

terms and conditions of this contract regarding an agent's use of DA data outside of the agency, if any, is a private matter to be negotiated by the principal and agent.

Furthermore, a wholesale DA provider will probably seek access to DA data through its status as an agent to several competing provider principals at the same time. This practice is understood by the carrier principals. A carrier principal could not reasonably expect that its wholesale DA provider only has it, one carrier principal, as its customer. A wholesale DA provider's incentive is to provide wholesale DA service to several carrier customers simultaneously.

IV. NONTRADITIONAL COMPETING PROVIDERS OF TELEPHONE EXCHANGE SERVICE AND TELEPHONE TOLL SERVICE SUCH AS DIRECTORY ASSISTANCE PROVIDERS ARE ELIGIBLE TO GAIN ACCESS TO DIRECTORY ASSISTANCE DATABASES UNDER SECTION 251(b)(3)

Excell concurs with the comments of independent DA providers and others that a DA provider is a "provider of telephone exchange or telephone toll service" when it offers call completion services.¹⁴ It is shocking that in this age of competition and new technology that the RBOCs and others in this proceeding dare to depict a provider of directory assistance as a non-carrier merely because it provides a nontraditional carrier service. Call completion should at least be construed as a telephone exchange service under the recently amended definition.

¹⁴ See e.g. INFONXX Comments at 7-12; see also Listing Services Solutions, Inc. Comments at 11.

In 1996, by amending the definition of "telephone exchange service," Congress rejected the idea that a "telephone exchange service" could be tied to any particular technology.¹⁵ The definition was amended to include "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service."¹⁶ The FCC has similarly begun to reject the notion that "telephone exchange service" refers to only local circuit switched voice telephone service and close substitutes or a traditional two-way switched voice service.¹⁷

It is impossible that a DA provider "does not actually transmit a call over the network" and does not provide "telecommunications service" as purported by Cincinnati Bell in this proceeding.¹⁸ If a DA provider offers call completion service, it must stand ready to transmit a call through the public switched telephone network. In Excell's call completion offerings, call completion is a "telecommunications service" because of the transport provided from Excell's terminating trunks to the terminating LEC switch or IXC tandem. Furthermore, the FCC has

¹⁵ See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, para.41 (1998) (deciding that certain advanced services, such as xDSL based services, provided by the RBOCs are "telephone exchange services")("Deployment of Advanced Capability").

¹⁶ 47 U.S.C. § 159(47)(B). See also Comments of Senators Stevens and Burns, Federal-State Joint Board on Universal service, CC Docket No. 96-45 (Report to Congress) (filed Jan. 26, 1998), at 2.

¹⁷ Deployment of Advanced Capability, paras. 41-43.

¹⁸ Cincinnati Bell Comments at 12.

recently reaffirmed that DA is a service that is an "adjunct-to-basic service" ¹⁹ which should be included in the definition of a "telecommunications service."²⁰

V. THE FCC SHOULD REQUIRE THE LECs TO CHARGE RATES FOR DIRECTORY ASSISTANCE THAT ARE COST-BASED

- A. It is Discriminatory for the LECs to Charge Cost-Based Rates to Traditional Competing Providers of Telephone Service for Directory Assistance Data While They Charge Excessive and Unreasonable So-Called "Market-Based" Rates to Other Directory Assistance Providers for the Same Information.

The FCC recently determined that access to DA databases is not part of the list of network elements that the LECs are required to provide on an unbundled basis (the "UNE Decision").²¹ However, the FCC made it clear that LECs are still required to provide directory assistance under the non-discrimination requirements of Section 251(b)(3).²² The RBOCs have attempted to use the UNE Decision as an excuse to provide so-called "market-based" prices for access to DA data. For instance, in response to Excell's recent request for access to Ameritech's directory listings at cost-based rates, Ameritech cites the UNE Decision stating that since "DA is not a unbundled network element, the TELRIC pricing standard under 252(d)(1) does not

¹⁹ An "adjunct-to basic" service is a service that facilitates the use of traditional telephone service but does not alter the fundamental character of telephone service. See North American Telecommunications Association, Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, Memorandum Opinion and Order, 101 F.C.C. 2d 349, paras. 23-28 (1985).

²⁰ Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities; Report and Order and Further Notice of Inquiry, WT Docket No. 96-198, para. 77, (rel. Sept. 29, 1999).

²¹ See FCC Promotes Local Telecommunications Competition, Adopts Rules on Unbundling of Network Elements, News Release (Sept. 15, 1999) (the text of the UNE Decision has not yet been released).

²² Id. at 4.

apply.”²³ Excell, however, submits that the UNE Decision has no bearing on whether or not the FCC can require LECs to provide access to DA at cost-based rates under Section 251(b)(3), the provision which is relevant to this proceeding.

The FCC must reject the RBOCs’ “market-based” prices for access to directory assistance because these rates have been excessive and unreasonable. For instance, Southwestern Bell Telephone (“SWBT”) provides access to DA listings at the cost-based rates of \$.0011 per initial listing (and \$.0014 per electronic update and \$.0019 per magnetic tape update) to telecommunications providers. Conversely, SWBT provides a so-called market rate of \$.0585 per listing to other DA providers. This is despite the fact that these DA providers are, for all intents and purposes, competing providers of telephone exchange service and/or telephone toll service by virtue of their agency status or their ability to provide call completion. This is a discriminatory practice that will not be rectified merely by requiring the LECs to provide access “that is at least equal to the access that the providing local exchange carrier itself receives” and includes “the ability of a competing provider to obtain access that is at least equal in quality to that of the providing LEC.”²⁴

Excell agrees with FCC Commissioner Furchtgott-Roth that “nondiscriminatory access does not mean that the incumbent LEC must treat all requesting telecommunications carriers as it treats itself, but that the incumbent LEC must treat a particular requesting telecommunications carrier just as it treats all other requesting telecommunications carriers.”²⁵ If “nondiscriminatory

²³ Letter from R. Thomas to G. Mauk, COO of Excell (Oct. 21, 1999) (See Exhibit 1).

²⁴ See Order and Notice, Separate Statement of Commissioner Harold Furchtgott-Roth Dissenting in Part at 247-248 (“Furchtgott-Roth Dissent”).

²⁵ Id.

access” were interpreted as Excell and Commissioner Furchtgott-Roth have interpreted it, the FCC could require that LECs charge all providers of DA, including agents of competing carriers and DA providers that provide call completion, the same cost-based rates charged for DA data to traditional telephone service providers. The record in this proceeding indicates that MCI/Worldcom and others support this alternative approach that would require LECs to provide DA data to DA providers at cost-based rates.²⁶

B. The FCC is Also Authorized By Sections 201(b) and 202(a) of the Communications Act to Prescribe Cost-Based Rates for Access to Directory Assistance Data.

Sections 201(b) and 202(a) provide additional support for the FCC to conclude that it is authorized to prescribe cost-based rates for directory assistance. Section 201(b) declares unlawful all unjust and unreasonable “charges, practices, classifications, and regulations” for or in connection with interstate communication by wire.²⁷ Section 202(a) declares it unlawful “for any common carrier to make any unjust or unreasonable discrimination in charges , practices . . . for or in connection with like communication service . . . or give any undue or any unreasonable preference or advantage to any particular person, class of persons,”²⁸ By charging DA providers which are traditional telephone service providers lower, cost-based rates for DA data and charging independent DA providers (which may also be agents of competing carriers and/or perform call completion) higher rates, the LECs are discriminating between two classes of DA providers in violation of Sections 201(b) and 202(a) of the Act.

²⁶ See e.g. MCI Worldcom Comments at 8-9.

²⁷ 47 U.S.C. § 201(b).

²⁸ 47 U.S.C. § 202(a).

Bell Atlantic's claim that Section 201 and 202 do not apply is unfounded.²⁹ Bell Atlantic states that the provision of DA is an intrastate matter and that "DA has traditionally been regulated by the states."³⁰ The FCC should discard Bell Atlantic's reasoning because the carriers and DA providers involved in this proceeding often desire nondiscriminatory access to DA data to provide national directory assistance - - unquestionably an interstate service.

VI. RBOCS MUST PROVIDE INDEPENDENT DIRECTORY ASSISTANCE PROVIDERS WITH IN-REGION LOCAL AND NONLOCAL LISTINGS, INCLUDING THE LISTINGS OF END USERS THAT ARE SERVED BY OTHER LECS WITHIN THAT REGION

Several participants in this proceeding have urged the FCC to only require the RBOCs to provide access to the DA data of their local end user customers. Excell instead urges the FCC to require RBOCs to provide access to all in-region directory listings (including names and addresses associated with nonpublished numbers), notwithstanding whether all such in-region customers are customers of the RBOC for local exchange service. The FCC has recognized the RBOCs' unique monopoly position regarding control over all of the local and nonlocal in-region DA data.³¹ In the US WEST Decision, the FCC stated that "because of [US WEST's] dominant position in [the local exchange and exchange access markets], US WEST's directory assistance databases include the telephone numbers of US WEST customers as well as the telephone

²⁹ Bell Atlantic at 7.

³⁰ Bell Atlantic at 7.

³¹ See Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, CC Docket Nos. 97-172 and 92-105 (rel. Sept. 27, 1999) ("US WEST Decision").

numbers of the customers of independent LECs and competitive LECs operating in US WEST's region."³²

Additionally, most of the DA provider participants in this proceeding have identified the RBOCs as possessing the most reliable and accurate information available. Thus, as long as DA providers can gain access to all in-region listings from each RBOC, Excell agrees with the position of the RBOCs that they should not have to provide access to the out-of-region data they themselves must obtain from third parties. By making each RBOC responsible for the provision of access to DA data for only the in-region data available in each region simplifies the process of making DA data available to those that request it. It also raises the likelihood that DA providers will gain access to the most reliable and most accurate databases available, thereby fostering fair competition.

VII. CONCLUSION

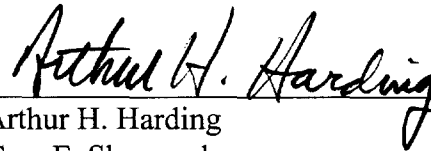
For the reasons explained herein, the FCC should take action that would promote competition in the market for directory assistance services. To accomplish this goal, the FCC should conclude that a competing provider of telephone exchange service or telephone toll

³² Id. para. 35. Because of this dominant position over local and nonlocal in-region DA data, the FCC has ordered US WEST to make all of the in-region listing information it uses to provide its regionwide directory assistance available to all unaffiliated entities that request it. Id. at 47.

service, an agent of a competing provider for these services, and a directory assistance provider that performs call completion are all entitled to nondiscriminatory access to directory assistance at cost-based rates.

Respectfully submitted,

EXCELL AGENT SERVICES, L.L.C.

A handwritten signature in black ink, reading "Arthur H. Harding", is written over a horizontal line.

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October 21, 1999

Mr. Gilbert E. Mauk
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Dear Mr. Mauk:

This is in response to your October 6, 1999 letter to Mr. Notebaert regarding the purchase of directory assistance listings. The Ameritech Operating Companies are willing to provide Excell Agent Services with up-to-date directory assistance listings at the same reasonable, market-based prices at which we have provided such listings for years. Although we have studied your argument, we have concluded that the Ameritech Operating Companies are not legally required to make directory listings available at cost-based prices.

Section 251(b)(3) of the Telecommunications Act¹ only requires local exchange carriers to provide nondiscriminatory access to directory assistance to competing providers of telephone exchange and telephone toll service. Excell does not qualify as either a telephone exchange or telephone toll service provider. In fact, the FCC's Common Carrier Bureau previously ruled that directory service providers such as Excell are not providers of telephone exchange or toll services. The Bureau expressly held that "INFONXX, as a DA service provider, is neither a provider of telephone service nor a provider of telephone toll service as defined by the Act..."² The Commission has previously stated that entities that are not providers of telephone exchange or toll service are not entitled to protection available to competing providers under Section 251(b)(3).³ Thus, the Ameritech Operating Companies have no statutory duty to make directory assistance listings available to Excell Agent Services under Section 251 of the Act.³

¹ 47 U.S.C. 257(b)(3).

² In the Matter of INFONXX, Inc. v. NYNEX, Memorandum and Order, File No. E-97-16, May 27, 1998 (¶ 11).

³ The FCC recently issued a Notice of Proposed Rulemaking that seeks comment on whether Section 251(b)(3) authorizes the FCC to require LECs to make directory assistance listings available to directory assistance providers that do not provide telephone exchange or toll service. Although the FCC has tentatively concluded that directory service providers are not entitled to the provisions of Section 251(b)(3), Ameritech has made directory listings available on nondiscriminatory basis to directory service providers, on a market-priced basis. See, In the Matter of Implementation of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report

Nor does the FCC's recent Order on National Directory Assistance require that local exchange carriers make non-local directory assistance listings available at cost. In that Order, the FCC ruled that US West must make available to unaffiliated entities all the in-region non-local directory listing information it uses to provide region wide directory assistance service at the same rates, terms and conditions it imputes to itself. Clearly, the FCC required nondiscriminatory rates, not cost-based rates. In compliance with this requirement (and contrary to the claims in your letter), Ameritech does impute to itself the same rates which it charges unaffiliated entities. In addition, Section 251(b)(3) (unlike Section 251(c) of the Act) does not require cost-based pricing. Since the FCC recently determined that DA is not a unbundled network element, the TELRIC pricing standard under Section 252(d)(1) does not apply. Thus, your reliance upon Texas PUC Docket No. 19461 (a proceeding on TELRIC pricing) is also misplaced.

For these reasons, the Ameritech Operating Companies have no legal obligation to make directory listings available to Excell under Section 251 of the Act, but are willing to continue to do so at market rates. We believe that after you review the various materials which your letter cites you will agree.

If you want to discuss this matter further, please call Peter Potoski at (248) 424-2464.

Sincerely,



cc: Lawrence Strickling
Dan J. Evanoff

Certificate of Service

I, Tonya Y. VanField, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Reply Comments" was served this 28th day of October, 1999, via first class mail, postage prepaid, upon the following:

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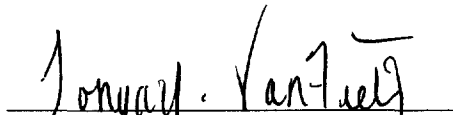
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